IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7354 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BANKIM BIPINBHAI DESAI - Petitioner(s)

Versus

STATE OF GUAJRAT & 2 - Respondent(s)

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Appearance :

MR RS SANJANWALA for Petitioner No(s).: 1.
MR HL JANI, AGP for Respondent No(s).: 1.
DS AFF.NOT FILED (N) for Respondent No(s).: 1.
HL PATEL ADVOCATES for Respondent No(s).: 2.
NOTICE SERVED BY DS for Respondent No(s).: 3.

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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date : 02/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

Rule. Mr. HL Jani, Ld. AGP waives service of rule for respondents no. 1 and 3 and Mr. Vjiay H Patel, learned advocate waives service of rule for respondent no. 2.

Having heard Mr. RS Sanjanwala, learned advocate for petitioner and having perused the averments made in the petition together with the annexures and having heard Mr. Jani and Mr. Patel for the respondents, it appears that the petitioner has approached respondent no. 3 with a prayer to grant him NA Permission for the land on which the construction in question is standing. It is the say of the petitioner that respondent no. 3 has rejected the application for grant of NA Permission on the ground that there is construction admeasuring 73.17 sq. mtrs. which is on the margin land and that is required to be removed by the petitioner and unless the said construction is removed or it is regularized by respondent no. 2 i.e. Valsad Nagar Palika, the NA Permission cannot be granted. The petitioner has, therefore, challenged the impugned order of respondent no. 3 dated 15th April, 2005 which is at Annexure-K to the petition. At the outset, Mr. Sanjanwala has made it clear to us that he does not, at this stage, press reliefs (b) and (c) of para. 22 of the petition.

It is the say of respondent no. 2 that there is no such requirement that first the construction has to be regularized and thereafter the Collector can grant NA Permission. Mr. Jani for respondents no. 1 and 3 has, however, submitted that what has been submitted by the learned advocate for the petitioner now is totally different from what has been prayed for in the relief clause of the petition.

It appears to us that in accordance with the circular that has been issued by the Revenue Department, Government of Gujarat dated 15th November, 2001 the Collector can refuse NA Permission only on the grounds stated in the said circular. The said circular states that the permission can be refused if there is breach of Ribbon Development Rules committed by the concerned applicant or on the ground that the said land is under acquisition or under proposed acquisition or if the land is a new tenure land under the Tenancy Act or grant of such permission is prohibited in any such law unless the requisite premium is paid. The impugned order does not indicate that the NA Permission has been refused on any of these grounds. It, therefore, clearly appears to us that the permission has been denied on irrelevant ground and hence the impugned order is required to be quashed and set aside and it is hereby ordered to be quashed and set aside. We now remit the matter back to the Collector to consider the application of the petitioner afresh and

decide the same on its merits in light of the observations made in this order.

Rule made absolute to the aforesaid extent with no order as to costs.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

* Pansala.